

KISSINGER N. SIBANDA Esq, Attorney at Law

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Attorney for Plaintiff.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Case No: 1:23-CV-05752-JMF

KISSINGER N. SIBANDA

Plaintiff,

v.

**DAVID ELLISON, DAVID BENIOFF,
BILLY RAY, DARREN LEMKE,
SKYDANCE PRODUCTIONS, LLC, a
California Limited Company; and GEMINI
PICTURES, LLC, a California Limited
Liability Company, ASHLEE LIN, FOSUN
PICTURES INC.**

Defendants.

PLAINTIFF'S DECLARATION:

**RESPONSE TO DEFENDANTS' MOTIONS
TO DIMISS
(LIN and SKYDANCE Defendants).**

1 Kissinger N. Sibanda Esq, an attorney duly admitted to practice in the District of
2 Columbia, SDNY for this matter, and admitted to the United States Second Circuit, United States
3 Supreme Court declares, pursuant to 28 U.S.C. §1746, under penalty of perjury, that the
4 following is true and correct:
5

6 I am familiar with the facts stated in the complaint.

7 I submit this declaration in support of my response to against defendants’ motions to dismiss
8 this action.

9 I am familiar with Federal Procedure and the Rules of this Court, the Southern District of New
10 York.
11

12 In addition, I hold a double Masters in Trial Advocacy for both State (Temple James
13 Beasley School of Law), the number 1 ranked Program in Trial advocacy in the country, and
14 Federal defense (California Western School of Law). I was the first in the United States to
15 achieve this distinction of a double master’s in trial advocacy from American Universities.
16

17 In 2011, I undertook the Federal Bar SDNY *Pro Bono* training.

18 I am competent and knowledgeable to appear in this matter.

19 Plaintiff attaches the following:

- 20 1. Exhibit: 1: Sibanda Deposition, at 87-88.
- 21 2. Exhibits: 2: Earlier work by plaintiff – “If God was a poet.” New Arica Press, South
22 Africa. 1996.
- 23 3. Exhibits: 3. Earlier work by plaintiff – “The Songs of Soweto.” Africa World Press.
24 2001.
- 25 4. Exhibit: 4: Email from Ashlee Lin dated December 23, 2020, stating in part:
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27
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- 2 -

Plaintiff’s Declaration:

Response to Defendants’ Motion To Dismiss

1 “I have also explained to you the **frivolousness of your contention that Gemini**
2 **Man infringes your book.** I have read enough of the book to understand that.”
(Emphasis added.) *Id.*

3
4 5. Exhibit: 5: Email from Ashlee Lin dated November 30, 2020, stating in part:

5 “I assure you that we have evaluated the merits of your alleged infringement claim
6 **based on objective legal analysis.**” *Id.* (Emphasis added.)

6
7 6. Exhibit: 6: Copyright Registration for “The Return to Gibraltar.”

7
8 7. Exhibit: 7: Copyright registration for “Gemini Man.”

8
9 8. Exhibit: 8: News article, “From Dusty Qunu to Big Apple.”

10 Respectfully submitted,

11
12 Dated: 10/16/2023

LIVINGSTON, NJ

13
14 By: /s/Kissinger N. Sibanda

15
16 DR. KISSINGER N. SIBANDA ESQ

The Law Offices of Kissinger N. Sibanda

17 LL. B (Hons); LL.M (State / Trial); LL.M (Federal/ Trial), SJD.

18 Admitted: United States Supreme Court

19 Second Circuit

20 Mail to: PO Box. 714. Livingston. NJ 07039

21 *Plaintiff's Attorney*